

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: June 29, 2010
POSITION: Oppose

BILL NUMBER: AB 2458
AUTHOR: L. Saldana

BILL SUMMARY: Taxation: Penalties: LLCs

This bill would specify that in the case of a "small business" the 10-percent penalty for underpayment of the estimated Limited Liability Companies (LLC) fee, or the penalty for failure to file a timely information report as specified, would be due and payable 60 days from the date of notification. This bill would define a "small business" to be a business whose total income attributable to California from all sources to be less than \$500,000 for the taxable year.

FISCAL SUMMARY

At the time of this analysis the Franchise Tax Board's (FTB) revenue estimate for the June 29, 2010, amended version has not been completed.

FTB's revenue estimate of the May 3, 2010, version which defined a "small business" as a business whose total income attributable to California from all sources was less than \$1 million, projected losses of \$150,000 in 2009-10, \$6,000 in 2010-11, and \$3,000 in 2011-12.

Costs to the FTB have not been identified and will be provided as the bill moves through the legislative process.

SUMMARY OF CHANGES

Amendments to this bill since our analysis of the April 5, 2010, version include the following which do not alter our position:

This bill would apply to penalties imposed on or after January 1, 2011, and before January 1, 2016.

The requirement that certification by the Secretary of State was necessary prior to the FTB assessing the penalty has been removed.

The income threshold for purposes of being defined as a small business has been lowered from \$1 million to \$500,000.

COMMENTS

Finance opposes this measure as it would result in a revenue loss to the General Fund in the range of \$150,000 and result in additional costs not provided for in the state's budget at a time when the state faces continued fiscal difficulties.

Analyst/Principal (0724) R. Lawrence	Date	Program Budget Manager Mark Hill	Date
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Department Deputy Director	Date
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Governor's Office:	By:	Date:	Position Approved _____
			Position Disapproved _____

BILL ANALYSIS	Form DF-43 (Rev 03/95 Buff)
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L. Saldana

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ANALYSIS**A. Programmatic Analysis****Under existing state law**

An LLC not classified as corporation must pay an \$800 annual tax and a fee if it is organized, doing business, or registered in California

The annual fee is based on the LLC's total income from all sources reportable in this state and is determined as follows:

Income from	To	LLC Fee
\$250,000	\$499,999	\$900
\$500,000	\$999,999	\$2,500
\$1,000,000	\$4,999,999	\$6,500
\$5,000,000	And over	\$11,790

As of tax year 2009, the annual California LLC fee must be estimated and paid by 15th day of the sixth month of the current taxable year. Any LLC fee due that was not paid as an estimated fee payment is payable by the due date of the LLC return, which is the 15th day of the fourth month following the end of the tax year.

If the estimated payment is underpaid, and is less than the fee that was due the previous taxable year, a 10-percent penalty is imposed on the amount of the underpayment on the day the fee is due.

Every domestic and registered foreign liability company and corporation is required to file a Statement of Information with the Secretary of State as specified. Failure to do so results in a \$50 penalty in the case of nonprofit Public Benefit Corporations and nonprofit Mutual Benefit Corporations, and a \$250 penalty for all other LLCs and Corporations.

This bill would do the following:

Specify that for a "small business" the 10-percent penalty for the underpayment of the estimated LLC fee will be due and payable within 60 days from the date the LLC was notified of the penalty. The 60-day due date would also apply to penalties imposed on a "small business" for not filing a timely statement of Information with the Secretary of State.

Define a "small business" to be a business whose total income, attributable to California from all sources, is less than \$500,000 in a taxable year.

Apply to penalties imposed or assessed on or after January 1, 2011.

B. Fiscal Analysis

FTB's revenue estimate for the June 29, 2010, amended version has not been completed.

FTB's revenue estimate of the May 3, 2010, version which defined a "small business" as a business whose total income attributable to California from all sources was less than \$1 million, projected losses of \$150,000 in 2009-10, \$6,000 in 2010-11, and \$3,000 in 2011-12.

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)**Form DF-43****AUTHOR****AMENDMENT DATE****BILL NUMBER**

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Costs to the FTB have not been identified and will be provided as the bill moves through the legislative process.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							
	LA	(Dollars in Thousands)							
	CO	PROP							Fund
	RV	98	FC	2009-2010	FC	2010-2011	FC	2011-2012	Code
1104/Corp Tax	RV	No	-----	See Fiscal Summary				-----	0001
1730/FTB	SO	No	-----	See Fiscal Summary				-----	0001